



UNITED STATES PATENT AND TRADEMARK OFFICE

WT.
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,646	09/27/2000	Larry A. Brocious	EN999-069	7162
30743	7590	04/14/2005	EXAMINER	
WHITHAM, CURTIS & CHRISTOFFERSON, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190			ART UNIT	PAPER NUMBER

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Wkt

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No.	Applicant(s)
	09/670,646	BROCIUS ET AL.

Examiner	Art Unit	
Martin Lerner	2654	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 23 March 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))
6. The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. Other (including any explanation in support of the above items):

**NOTIFICATION OF NON-COMPLIANCE
WITH THE REQUIREMENTS OF 37 CFR §41.37**

Applicants' Appeal Brief filed 23 March 2005 fails to comply with 37 CFR §41.37.

Applicants must note that the rules of practice have changed for filing appeals before the United States Patent and Trademark Office. New Rules of Practice before the Board of Patent Appeals and Interferences are effective for all appeals filed after 13 September 2004. Specifically, 37 CFR §1.192 is abolished. The content of an Appeal Brief is now governed by 37 CFR §41.37. More information may be found on the web site of the United States Patent and Trademark Office at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

The text of Rule 41 is there set forth in its entirety.

Specifically, Applicants' Appeal Brief is defective in the following respects:

- (1) Appellants' Brief, Page 1, should not refer to 37 CFR §1.192, which is abolished.
- (2) Appellants' Brief, Pages 7 to 9, does not satisfy the requirements of 37 CFR §41.37(c)(1)(v). "Summary of Invention" is now "Summary of the Claimed Subject Matter". The section must refer to the claimed subject matter of each of the independent claims, and must refer to the specification by page and line numbers.
- (3) Appellants' Brief, Page 10, does not satisfy the requirements of 37 CFR §41.37(c)(1)(vi). "Issues" is now "Grounds of Rejection to be Reviewed on Appeal".

(4) Appellants' Brief, Page 11, does not satisfy the requirements of 37 CFR §41.37. There is no section under the new rules for "Grouping of Claims".

(5) Appellants' Brief, Page 28, does not satisfy the requirements of 37 CFR §41.37(c)(1)(viii). The section should not refer to 37 CFR §1.192(c)(9), which is abolished.

A shortened statutory period for Applicants to amend the Appeal Brief is set to expire **ONE MONTH** from the mailing date of this letter. The time period is extendable under 37 CFR §1.136. See 37 CFR §41.37(e).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martin Lerner whose telephone number is (571) 272-7608. The examiner can normally be reached on 8:30 AM to 6:00 PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (571) 272-7602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2654

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML
4/7/05

Martin Lerner
Martin Lerner
Examiner
Group Art Unit 2654